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FISCAL IMPACT STATEMENT

LS 6902 | **NOTE PREPARED:** Jan 26, 2006
BILL NUMBER: HB 1279 | **BILL AMENDED:** Jan 26, 2006

SUBJECT: Telecommunications.

FIRST AUTHOR: Rep. Murphy | **BILL STATUS:** 2nd Reading - 1st House
FIRST SPONSOR:

FUNDS AFFECTED: X **GENERAL** | **IMPACT:** State & Local
X **DEDICATED**
FEDERAL

Summary of Legislation: (Amended) This bill prohibits the Utility Consumer Counselor from engaging in another occupation that would conflict with the duties of the office. (Current law prohibits the counselor from engaging in any other occupation.)

The bill specifies that a person that transmits communications over Internet Protocol enabled services or provides commercial mobile radio service (CMRS) is not a public utility.

The bill also prohibits the Utility Regulatory Commission (IURC) from exercising jurisdiction over: (1) advanced and broadband services; (2) information services; and (3) CMRS. The bill prohibits, after June 30, 2006, the IURC from exercising jurisdiction over nonbasic telecommunications service.

This bill also requires an incumbent local exchange carrier (ILEC) to continue to offer a flat monthly rate for unlimited local calling in exchange areas in which the provider offers basic telecommunications service on June 30, 2006. The bill provides that an extended area of service in which a provider offers basic telecommunications service on June 30, 2006, may not be reduced in area or scope without the IURC's approval.

It prohibits the IURC from exercising jurisdiction over basic telecommunications service in an exchange area if broadband services are available to at least 50% of households. This bill requires the IURC to biennially identify and eliminate obsolete telecommunications regulations. The bill requires the IURC to adopt rules requiring a telecommunications service provider, whenever the provider communicates with a residential customer about changing the customer's basic telecommunications service to non basic telecommunications service, to notify the customer of: (1) the option of basic telecommunications service; and (2) any regulatory protections the customer would forego by switching to nonbasic telecommunications service.

This bill also specifies that duties to provide dual party relay services apply to a communications service provider that is required to provide such services under federal law.

This bill preserves the IURC's jurisdiction over: (1) dual party relay services; (2) the 211 dialing code; (3) slamming and cramming laws; (4) interconnection agreements, including interconnection not governed by federal law; and (5) rates charged by an ILEC to a pay phone service provider.

This bill prohibits a telecommunications provider from establishing a rate, term, or condition that is unreasonably preferential, prejudicial, or discriminatory.

It allows the IURC to: (1) establish service quality standards for services provided by an ILEC to another provider; and (2) require semi-annual reporting of service quality goals for other services offered by a provider.

The bill also allows the IURC to: (1) order certain equitable remedies; and (2) impose a civil penalty of not more than $10,000; if a provider engages in a prohibited act. The bill provides that a civil penalty may be imposed only for a willful failure to comply with service quality standards or goals or certain billing errors.

This bill prohibits a communications service provider from entering into an agreement after April 30, 2006, to limit or restrict another provider's access to privately or publicly owned real property.

The bill also prohibits the owner, operator, or developer of multitenant real estate used for business purposes from limiting or restricting access to privately or publicly owned real property by a communications service provider authorized to provide service.

It requires a local unit to make a local franchise available to any entity, other than the unit's incumbent cable operator, that seeks to provide video programming in the unit by means of any facilities that make use of public rights-of-way, regardless of the technology used. The bill provides that a franchise made available to such an entity must contain identical terms and conditions as the franchise in effect for the incumbent cable operator. This bill prohibits an entity that does not hold a franchise from providing video programming in a unit by means of any facilities that make use of public rights-of-way, regardless of the technology used.

The bill also prohibits the IURC from requiring a multichannel video programming distributor to pay any fee or charge, other than a franchise fee paid to a local unit, as a condition of receiving or holding a state certificate of franchise authority. (Previous amendment removed provisions providing that after June 30, 2006, the IURC is the sole franchising authority for the provision of video service in Indiana.)

The bill requires the IURC to adopt rules to establish the Indiana Lifeline Assistance Program to provide reduced charges for basic telecommunications service for eligible customers. The bill also requires the IURC to submit to the Regulatory Flexibility Committee an analysis of various telecommunications issues.

Effective Date: Upon passage; July 1, 2006.

Explanation of State Expenditures: This bill contains provisions that will add responsibilities to the IURC and that will remove responsibilities from the Commission. Because the Commission's responsibilities encompass all utility types, it is unknown what proportion of the Commission's spending is related to telecommunications.

The bill also requires the IURC to report to the Regulatory Flexibility Committee on its analysis of various issues concerning the telecommunications industry, including the status of competition in the industry and the availability of various telecommunication services in Indiana. The bill requires the IURC to report to the Committee by November 15, 2007, and may be made in conjunction with its annual report to the Committee. Beginning with the annual report that is due July 1, 2008, the IURC will be required to report to the Committee every even-numbered year thereafter.

Explanation of State Revenues: *Public Utility Fund:* The operating budgets of the IURC and the Office of the Utility Consumer Counselor (OUCC) are funded by regulated utilities operating in Indiana. The IURC determines the rate at which to bill the utilities based on the two agencies' budgets, less reversions, divided by the total amount of gross intra-state operating revenue received by the regulated utilities for the previous fiscal year. Based on this formula, utilities are currently billed approximately 0.10% of their gross intra-state operating revenues to fund the IURC and OUCC. In FY 2005, fees from the utilities and fines generated approximately $11.7 M.

This bill removes entities that transmit communications over the Internet and entities that provide commercial mobile radio service from the definition of a public utility. Therefore, these entities will no longer be required to pay the Public Utility Fee. Revenue to the Public Utility Fund will not decrease, however. Because the Commission bases its Public Utility Fee on the gross revenue of public utilities, the rate will increase for the remaining public utilities to create a fee that will generate the necessary amount of revenue.

Rates & Charges: Although the Commission will retain its jurisdiction over the provision of dual-party relay services, 211 services, slamming and cramming laws, interconnection agreements, and rates charged to pay phone service providers, telecommunications carriers providing basic telecommunications will no longer be subject to the Commission's approval for setting rates and charges for service. Such services are subject to the state Sales Tax. Revenues generated by telecommunications carriers' services may increase or decrease subject to fluctuation in the carriers' rates and charges. State Sales Tax revenue is deposited in the following funds: General Fund, Property Tax Replacement Fund, Public Mass Transportation Fund, Industrial Rail Service Fund, and the Commuter Rail Service Fund.

The IURC is to retain jurisdiction over the rates that may be charged by an incumbent local exchange carrier to a pay phone service provider.

Civil Penalties: The bill allows the IURC to impose a civil penalty of not more than $10,000 per violation if a telecommunications provider: is involved with predatory pricing; fails to comply with certain service quality rules; repeats billing errors due to intentional misconduct, an act of fraud or willful disregard; or enters a contract, agreement, or other arrangement that requires a person to restrict or limit the ability of a provider to obtain easements or rights-of-way on property used to provide communications services.

Civil penalties that are collected for violations that affect customers of a provider are to be refunded to the customers. Civil penalties collected due to one provider harming another shall be awarded to the harmed provider, and civil penalties collected for any a violation other than to customers or another provider are to be deposited in an account designated by the Indiana Finance Authority to be used for making loans and grants available for broadband developers.

(Revised) *Indiana Lifeline Assistance (ILA) Program:* This provision will cause an indeterminable increase in expenditures for the IURC and OUCC. The ILA Program will provide basic telecommunication services at a reduced rate to eligible customers. An eligible customer is defined as a person who: (1) has an income at or below 150% of the federal poverty level; and (2) has a child who receives any of the following:

(A) Medicaid.
(B) Food stamps.
(C) Supplemental Security Income.
(D) Federal public housing assistance.
(E) Home energy assistance under a program administered by the Division of Family Resources under IC 12-14-11.
(F) Assistance under the federal Temporary Assistance to Needy Families (TANF) program (45 CFR 260 et seq.).
(G) Free lunches under the national school lunch program.

The cost of the program is to be paid out of the budgets of the IURC and OUCC. The cost of this program is indeterminable. The IURC and OUCC will be required to reimburse the providers for the lost revenue associated with providing eligible customers this reduced rate service.

Explanation of Local Expenditures: Municipal utilities are not subject to the Public Utility Fee.

Explanation of Local Revenues:

State Agencies Affected: Indiana Utility Regulatory Commission; Attorney General.

Local Agencies Affected: Units having franchises with video service providers.

Information Sources: Indiana Utility Regulatory Commission.

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